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United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,650

TAX REVIEW

F. E. MEYER, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

PETITION TO REVIEW DECISION OF THE TAX COURT OF THE UNITED STATES

FILED SEPTEMBER 24, 1956

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[fol. 1] Docket Entries.

F. E. Meyer, Petitioner,
Docket No. 34221. vs.
Commissioner of Internal Revenue, Respondent.

Appearances.

For Petitioner: Edward C. Mogren, Esq.

For Respondent: George Van Raekel, Esq.

1951

May 10—Petition received and filed. Taxpayer notified. Fee paid.

May 11—Copy of petition served on General Counsel.

Jun. 11—Amended petition filed by petitioner. 6/12/51, copy served.

Jul. 13—Entry of appearance of Edward C. Mogren as counsel filed.

Aug. 7—Answer to amended petition filed by General Counsel.

Aug. 7—Request for hearing in St. Paul, filed by General Counsel.

Aug. 15—Notice issued placing proceeding on St. Paul calendar. Service of answer and request made.

1953

Mar. 17—Hearing set July 6, 1953, St. Paul, Minn.

Jul. 14—Hearing had before Judge Turner on merits. Briefs, 10/12/53, replies, 11/12/53.

Jul. 29—Transcript of Hearing 7/14/53 filed.

Oct. 9—Brief filed by General Counsel.

Docket Entries

Nov. 2—Motion for leave to file the attached brief, brief lodged, filed by taxpayer.

Nov. 2—Findings of fact, conclusions of law and order for judgment lodged by taxpayer.

Nov. 3—Motion of Nov. 2, 1953 is granted.

Nov. 3—Copy of motion, brief and findings served on General Counsel.

Dec. 14—Reply brief filed by taxpayer.

1955

Sep. 30—Memorandum findings of fact and opinion filed. Turner J. Decision will be entered for the respondent. Copy served 10/3/55.

Oct. 3—Decision entered, Turner J. Div. 8.

[fol. 2]

Dec. 30—Petition for review by U. S. Court of Appeals, Eighth Circuit, filed by petitioner.

Dec. 30—Proof of service filed.

1956

Sep. 10—Certified copy of order of Court of Appeals, Eighth Circuit, extending time for filing transcript of record 20 days from September 6, 1956 filed.

Sep. 14—Designation of Contents of Record on Review with proof of service thereon filed by petitioner.

Sep. 14—Supplemental Designation of Contents of Record on Review with proof of service thereon filed by petitioner.

Sep. 14—Order that petitioner's exhibits 1 to 20, inclusive, and respondent's exhibit A to F, inclusive, be transmitted to U. S. Court of Appeals, Eighth Circuit, in their original form, entered.

Sep. 17—Designation of additional portions of record on review with proof of service thereon filed by General Counsel.

[fol. 3] (Petition of F. E. Meyer)

(Received and Filed May 10, 1951, The Tax Court of the United States)

The Tax Court of The United States

F. E. Meyer, Petitioner,
Docket No. 34221. vs.
Commissioner of Internal Revenue, Respondent.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated February 14, 1951, and as a basis of his proceeding alleges as follows:

I.

That the petitioner is an individual residing at 62 Summit Avenue, St. Paul 2, Minnesota. The returns for the period involved were filed with the Collector for the district of Minnesota.

II.

The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A", was mailed to the petitioner on February 14, 1951.

III.

The taxes in controversy are income taxes for the years 1948 and 1949 and the amount in dispute is $443.00.

IV.

The determination of the tax set forth in said notice of deficiency is based upon the following errors:

a) The failure of petitioner to include in his adjusted gross income the sum of $180.00 claimed to have been received by petitioner during the taxable year of 1948.

b) The deduction by petitioner from his adjusted gross income of the year 1949 loss based upon petitioner's loss of $6,340.00.

[fol. 4] c) The failure of the petitioner to include in his adjusted gross income the sum of $180.00 claimed to have been received by him as interest.

V.

The facts upon which the petitioner relies as a basis for this proceeding are as follows:

a) That petitioner actually sustained a loss of at least $6,340.00 in connection with the securing of a patent in the attempt by petitioner to improve, perfect, organize to market and attempt to market the said patent, said expense covering a period from 1926 to 1942, the petitioner now having abandoned the said patent, all of the expense being a total loss to him, and the said patent and the said efforts to market being a total loss.

b) That petitioner did not have an income of $180.00 as interest in the years 1948 and 1949 as contended by the Collector of Internal Revenue.

Wherefore, Petitioner prays that the Court may hear the proceeding and determine that petitioner is entitled to a credit for the loss of $6,340.00 as alleged by him with a proportionate loss for the year 1949, and that this petitioner did not have additional income of $180.00 in the years 1948 and 1949, and that the determination of the Collector of Internal Revenue that a deficiency exists in petitioner's liability for the year 1948 and a determination of petitioner's liability in the amount of $443.00 for the year 1949 be set aside and the returns as filed by this petitioner be allowed with the appropriate credits thereon.

F. E. MEYER,
Petitioner.
62 Summit Avenue,
St. Paul 2, Minnesota.

State of Minnesota,
County of Ramsey—ss.:

F. E. Meyer, being first duly sworn, says that he is the petitioner above named; that he has read the foregoing Petition and is familiar with the statements contained there-

in and that the statements contained therein are true except those stated to be upon information and belief, and that those he believes to be true.

F. E. MEYER
Petitioner.

Subscribed and sworn to before me this 4th day of May, 1951.

(Seal) E. C. MOGREN,
Notary Public, Ramsey County, Minn.

My Commission Expires April 28, 1952.

[fol. 5] Exhibit "A".

Treasury Department
Internal Revenue Service
St. Paul 1, Minn.

Office of the Collector
District of Minnesota

In Replying Refer To:

Feb. 14, 1951.

Frank E. Meyer
62 West Summit Avenue.
St. Paul 2, Minnesota

Dear Mr. Meyer:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1948 discloses a deficiency of $34.00 and the determination of your income tax liability for the taxable year ended December 31, 1949 discloses a deficiency of $443.00, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a

petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form or forms and forward to the Collector of Internal Revenue, St. Paul 1, Minnesota, for the attention of NKG-90D. The signing and filing of the form or forms will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form or forms, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner.

By E. F. Kelm,
Collector of Internal Revenue.

Enclosures:
Statement
Form of Agreement
NKG:agk
Min. IT-517

[fol. 6] (Amended Petition of F. E. Meyer)

(Received and Filed June 11, 1951, The Tax Court of the United States)

The Tax Court of the United States

F. E. Meyer, Petitioner
Docket No. 34221 vs.
Commissioner of Internal Revenue, Respondent

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated Febru-

ary 14, 1951, and as a basis of his proceeding alleges as follows:

I.

That the petitioner is an individual residing at 62 Summit Avenue, St. Paul 2, Minnesota. The returns for the period involoved were filed with the Collector for the district of Minnesota.

II.

A notice of deficiency, a copy of which is attached hereto and marked Exhibit "A", was mailed to the petitioner on February 14, 1951.

III.

The taxes in controversy are income taxes for the years 1948 and 1949 and the amount in dispute is $443.00.

IV.

The determination of the tax set forth in said notice of deficiency is based upon the following errors:

a) The failure of petitioner to include in his adjusted gross income the sum of $180.00 claimed to have been received by petitioner during the taxable year of 1948.

b) The deduction by petitioner from his adjusted gross income of the year 1949 loss based upon petitioner's loss of $6,340.00.

[fol. 7] c) The failure of the petitioner to include in his adjusted gross income the sum of $180.00 claimed to have been received by him as interest.

V.

The facts upon which the petitioner relies as a basis for this proceeding are as follows:

a) That petitioner actually sustained a loss of at least $6,340.00 in connection with the securing of a patent in the attempt by petitioner to improve, perfect, organize to market and attempt to market the said patent, said expense covering a period from 1926 to 1942, the petitioner now having abandoned the said patent, all of the expense being a total loss to him, and the said patent and the said efforts to market being a total loss.

b) That petitioner did not have an income of $180.00 as interest in the years 1948 and 1949 as contended by the Collector of Internal Revenue.

Wherefore, Petitioner prays that the Court may hear the proceeding and determine that petitioner is entitled to a credit for the loss of $6,340.00 as alleged by him with a proportionate loss for the year 1949, and that this petitioner did not have additional income of $180.00 in the years 1948 and 1949, and that the determination of the Collector of Internal Revenue that a deficiency exists in petitioner's liability for the year 1948 and a determination of petitioner's liability in the amount of $443.00 for the year 1949 be set aside and the returns as filed by this petitioner be allowed with the appropriate credits thereon.

F. E. MEYER,
Petitioner.
62 Summit Avenue,
St. Paul 2, Minnesota.

State of Minnesota,
County of Ramsey

F. E. Meyer, being first duly sworn, says that he is the petitioner above named; that he verified the original petition and is familiar with its contents and again swears that the allegations in the petition are true, and he further swears that he is familiar with the statements contained in the amendment to petition and that the statements con-

tained therein are true except those stated to be on information and belief, and that those he believes to be true.

F. E. MEYER,
Petitioner.

Subscribed and sworn to before me this 7th day of June, 1951.

JOHN T. O'DONNELL,
(Seal) Notary Public, Ramsey County, Minn.

My Commission Expires May 11, 1957.

[fol. 8] Exhibit "A"

Treasury Department
Internal Revenue Service
St. Paul 1, Minn.

Office of the Collector,
District of Minnesota.

In Replying Refer to:

Feb. 14, 1951.

Frank E. Meyer,
62 West Summit Avenue,
St. Paul 2, Minnesota.

Dear Mr. Meyer:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1948 discloses a deficiency of $34.00 and the determination of your income tax liability for the taxable year ended December 31, 1949 discloses a deficiency of $443.00, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form or forms and forward to the Collector of Internal Revenue, St. Paul 1, Minnesota, for the attention of NKG:90D. The signing and filing of the form or forms will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form or forms, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOEMEMAN,
Commissioner.
By E. F. Kelm,
Collector of Internal Revenue.

Enclosures:
Statement
Form of Agreement
NKG:agk
Mim. IT 517

[fol. 9] (Answer of Commissioner of Internal Revenue to Amended Petition)

(Received and Filed August 7, 1951, The Tax Court of the United States)

Comes Now the respondent, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed herein, admits, avers, and denies as follows:

I.

Admits the allegations contained in Paragraph I of the amended petition.

II.

Admits the allegations contained in Paragraph II of the amended petition, but avers that the amended petition fails to comply with Rule 7 (4) (I) of the Court's Rules of Practice in that no part of the statement accompanying the notice of deficiency is made a part of Exhibit "A" attached to the amended petition.

III.

Admits that the taxes in controversy are income taxes for the years 1948 and 1949, but denies that the amounts [fol. 10] in dispute are correctly set forth in Paragraph III of the amended petition. Avers that the amounts in dispute are $34.00 and $443.00 for the respective years 1948 and 1949.

IV.

(a), (b), and (c). Denies that the determination of taxes set forth in the notice of deficiency is based upon the errors alleged in subparagraphs (a), (b), and (c) of Paragraph IV of the amended petition, or upon any error whatsoever.

V.

(a), and (b). Denies the allegations contained in subparagraphs (a) and (b) of Paragraph V of the amended petition.

Denies, generally and specifically, each and every allegation contained in the amended petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, respondent prays that the Court redetermine the deficiencies herein to be the amounts deter-

mined by the Commissioner, viz: Income taxes for the years 1948 and 1949 in the respective amounts of $34.00 and $443.00.

CHARLES OLIPHANT,
Chief Counsel.
Bureau of Internal Revenue.

Of Counsel:
John D. Kiley
Division Counsel

Edward C. Adams
Special Attorney
Bureau of Internal Revenue

[fol. 147a] (Transcript of Testimony in Narrative Form)

(Filed September 14, 1956, The Tax Court of the United States)

(Filed in the United States Court of Appeals for the Eighth Circuit on September 26, 1956)

In The Tax Court of the United States.

F. E. Meyer, Petitioner,

Docket No. 34221 vs.

Commissioner of Internal Revenue, Respondent.

Record

FRANK E. MEYER, called as a witness for petitioner testified: — p. 12 — That he lives in St. Paul, is 68 years of age and employed at the Northern Pacific Railway as a clerk in the Freight Accounts since 1920 — p. 13 — That he conceived the idea of the tabulating machine while working at the Omaha Railway. That N. P. has used the machines extensively for a year or two; that when he first conceived the idea the Omaha was using International Business Ma-

chines for tabulating. That International Business Machines Company have machines to tabulate records — p. 14 — and have machines to tabulate records obtained from printed numbers and letters. Exhibits 1, 2 and 3 are cards used with IBM machines by the railroads for tabulating information — p. 15 — Exhibit 3 — p. 16 — is the card now used with variations and they use oblong holes now. Exhibit 2 shows the cards with round holes used originally.

I don't know if N. P. was using cards similar to Exhibit 1 when I started but they were using them about ten years ago, maybe fifteen — p. 17 —. Round holes in cards were used for many years in tabulating. Based upon their use, I conceived my pattern. The railroads first used a little hand punch to punch cards with few keys. The machines were manufactured by IBM and rented to users. About the time N. P. started they were using electric machines with mechanical punches at first at a rental of $125.00 a month — p. 20 —. The tabulators tabulated the date, waybill number, forwarding station and other information. With my idea the operator who billed would stick in a card and automatically punch it with the freight bill. This card would be [fol. 147b] sent to the General Office instead of all the records and it would save a lot of money. We are using that system now. With my invention they could punch these cards on the ordinary typewriter. p. 21 — Originally they rented the machines to punch the holes and my invention was an attachment to the ordinary typewriter and could be used on any standard typewriter. The L. C. Smith Company was interested. Instead of 100 girls punching cards they could place one machine on each sales table and instead of writing out a ticket she could just punch a card and then put them through the tabulator — p. 21 — p. 22 — Exhibit 4 is the patent which I received on a machine that I had remade and it could be attached to a typewriter — p. 23 — and the typewriter operated to punch the cards. The patent was issued December 19, 1922, by the United States of America. p. 24 — I took the patent to Marthaller Machine Company after A. M. Carlsen got no place with selling the machine. Marthaller had it over a year to improve the

keys. When we put the attachment on the typewriter, naturally it would make the touch heavier and harder to push down and there was not enough spring to bring the keys up. The original had a compensating spring and Marthaller was experimenting — p. 25 — with a compensating spring that would work without too much pressure. He never got the machine operatable.

Next I went to Northwestern Machine Company — p. 26 — and then I took it to Charlie Winters, a lawyer, to sue Northwestern Machine Company for not doing anything. He was supposed to work on the touch — p. 27 — and make it smooth running. Charlie Winters dropped the case. Then some fellows from the Remington Rand were interested in the machine through Dave Carlsen, a patent lawyer, and finally they said the Remington Rand would have to buy the patent in order to get in competition with IBM. p. 28 — Then I took it up with IBM and they finally told me they weren't interested. Then Dave Carlsen talked about a toggle motion and we put that on and Dave Carlsend tried to get another patent. p. 29 — With the toggle motion you push in the center and it comes down with tremendous force. The key would hit a point and the toggle would push down and that worked pretty good. We had a lot of power but we still had to use springs to get the keys back.

The Arlington Machine Company worked on the toggle [fol. 147c] and an engineer by the name of Kraft helped. This is probably in 1930 or 1931. In between 1922 and 1931 I had not built machines. No improvements had been made. We had a working model but it did not operate properly. The keys would not come back, it would get stuck. I finally kicked about it at Arlington Machine and told them the job wasn't good — p. 30 — The springs weren't the right type and I paid Arlington Machine Company and took it to Charlie Fairbanks. He was trying to get somebody to manufacture the machine so that it would actually work and you could sell it — p. 31 — and was working on getting a first class model which we could later take to a manufacturer. He improved the connections, but it was not much to speak about. I then went to Jack Olson and he did nothing. He only fooled around with the machine — p. 32. Olson claimed it was patentable and in 1937 Mr. Carlsen applied for

some more patents with the improvements. p. 33 — Finally Marston, supposed to be a great machinist, came to my house and said it would cost a couple hundred dollars to put it in first class manufacturing shape and I agreed to pay it to him. He didn't do anything. p. 34 — Then I met Reise and he got a job at General Mills but told me to see Zipper with General Mills and he didn't do anything but he got a man by the name of Fogelquist. Fogelquist tried to make a machine of his own and I knew it wouldn't work. p. 35 — Then Kraft and I conceived the idea of an electrical device.

In between the two persons, Fairbanks and Marston, Marston criticized Kraft. I actually got a patent from the government for the machine designed by Kraft in 1941. Marston was the first man who worked on the second machine. Exhibit 5 was a patent issued to Selmer A. Kraft and myself. He later assigned it to me and it covered the electrical improvements with the solenoid attachment and would eliminate the springs and everything and the trouble we had been having. p. 37.

That was the second patent and I never had any other. — p. 38. Then I was working on the accounting end of the machine quite a bit. The patent showed a [machine] that would punch the holes and operate electrically and was complete as far as the blueprints were concerned. p. 39 — I [fol. 1474] didn't do anything with the patents after Marston got through and Fogelquist worked on it. They worked on it after I got the second patent but did nothing and didn't manufacture. Marston said some [lumber] company wanted ten machines and I told him to go ahead and make them, but he didn't do anything although I paid him $50.00 a month up to $900.00 to complete the machine. He was going to manufacture a machine good enough to operate and in operating form and in accordance with the second patent. p. 40 — Marston had the machine and was supposed to work on it and perfect it. p. 41 — He didn't do anything. It was the identical machine the other fellows had worked on and the base and all was the same identical machine that I got the first patent on.

Olson had taken the toggles off. p. 42 — The toggle wasn't any good and the machine was just in the experimental stage. p. 43 — I would have sold the machine any time I got the chance and made several attempts to do so. I went to Rand at New York but didn't charge expense for that. Had the electric attachment on then. We tried to incorporate. A man named Shelzel in Detroit got the incorporation papers and everything. p. 44 — I went to Detroit two or three times and he proposed incorporating to manufacture the machine. He had no money but would operate through brokers to get money. We would have to first go through Securities Office and [geta] prospectus and then through brokers. That might have been in 1935 and I doubt if we had the electrical attachment then. We were incorporated for $300,000.00 I had not tried to manufacture; only to get a working model. p. 45 — Did'nt have a perfected model at that time but had patent. The attorney was to form corporation to manufacture the machine. I went to Mr. Abbott, a lawyer, to get a prospectus. He was a corporation lawyer in New York. D. W. Howe, a broker, sent me there because I couldn't sell stock until [wehad] a corporation and enough backers to show we could do business if we had the machine. The backers were some of the fellows that worked on the machine and were interested like Scannell and Schneider. I didn't have any outside backers. p. 47 — The corporation was formed when I went to New York. [fol. 147e] p. 48 — I was supposed to be president and my brother vice president and another man was secretary. I had a contract with D. W. Howe to sell stock but he went out of business and Mr. Abbott got sick with pneumonia. Abbott got Mr. Stone who said he would sell stock but I wasn't ready. I didn't want to sell any stock then because you had to open an office and there was a lot of expense. p. 49 — If you spend somebody's money, they would be looking for interest and I didn't do any more until I had the machine perfected. The Government is looking to sell bonds and it is pretty hard for a small guy to start and when you're bucking IBM and big companies, you have to be pretty good before you can do business. We didn't have any stockholders meetings. Shelzel told me you had to have that before you could form a corporation. p. 50 — Nothing

ever done about the corporation. p. 51 — I got in touch with a man named Shelzel in Detroit some time in 1934 or 1935. He was in the David State Building. Looked like a big business man. p. 52 — He wanted to know who he was dealing with. I had to pay him around $200.00 to incorporate. He was going to organize the corporation and I paid him to get out that Deleware charter. The next thing was to sell stock. p. 53 — Shelzel told me to go to New York and see Howe and Howe got Mr. Abbott. I paid Abbott $950.00 for the prospectus. He got it out for the corporation. We had another broker, Mr. Stone. I had no contract with him and he didn't do anything. Then there was a bond house in Chicago. I went to see but didn't get anything with them. I didn't go further with the corporation — just quit. The Deleware charter company told me to pay some money or I would lose the charter. I didn't pay. p. 55 — That was the end of the corporation. Exhibit C is a stock book I received from Abbott in the mail. I got a lot of other corporation books and records. We had no meetings prior to the time I got the book. William C. Meyer is shown as secretary-treasurer. p. 56 — He is my brother. He had nothing to do with it. I asked him if he had any objections to using his name and he was named vice president and I was named president. On the sheet marked Number 2, the stock certificate, part of it is gone. I mailed that to Abbott. p. 57 — Abbott, in his contract, said he wanted some stock. They all got a bonus from 1,000 to 2,000 shares. He demanded it and I mailed it to him. He did not fill it in [fol. 147f] the stock book. No stock was ever issued. We never passed any resolutions or anything or elected anybody. p. 58 — I went to New York to try to sell the machine to Rand and IBM. I think it was after the electrical attachment. p. 59 — I showed them a model of the machine. They thought it was good but the head engineer didn't and nothing happened. p. 60 — Before that I had contact with Schneider and Seannell of the Rand Corporation about buying the patent and model but nothing happened. p. 61 — They lost interest although I had a contract with them. I didn't pay any money or receive anything. I contacted Rex Machine Company in Cincinnati and they didn't do anything, also National Cash Register Company at Dayton. p. 62 — I had dozens of machine companies that I couldn't

do any business with them. I made a number of trips to Chicago to talk to people. After 1947 I don't think I went there. I went down on other occasions, not in 1948 or 1949, but in [194u], I think, was about the last. Then I went to L. C. Smith man and saw him again and the Rand man and they figured there wasn't much on that any more. p. 63 — In 1948 I told Mr. Gallagher that I wanted to get some loss: He is with the income tax office and I think I was filing a return. He wanted to allow me a loss. This was before 1948, I think. A loss for $915.00 with Marston and then Clark was working with Gallagher and he said to Gallagher to wait a minute. That I had a whole lot more. I gave him a list, $6,300.00, I think it was and he said he did not have anything more to do with it. He said he didn't have authority to allow it. He told me I would have to abandon the patent before. p. 64 — Before that I had been trying to get losses at times when they occured but I started reading this Prentice-Hall. In 1940, I gave it up. The IBM has now got a card, they use a code and they print. I have a check here. The holes are perforated all around and all over it. I write the check and the card is punched. They give it to you this way and they get a card and you get your check too. p 65 — To come right down to it, I don't know what you might mean by abandoning it but in 1949 I did say that I offered the machine to some guy down there in the income tax bureau. I would bring it to his desk. I didn't want it any more because if that wasn't abandoning it, I don't know what it would be and I couldn't do anything with it. I brought all my papers down their at one time. [fol. 147g] p. 66 — . . called up the man at the Internal Revenue Bureau — the second man I got a letter from — and I told him that I brought all my papers down there and I showed him receipts and everything and he said "that doesn't mean anything. We don't go by that." "It don't work out that way". I was talking only with the persons in the Internal Revenue Department. p. 67 — I went down to Chicago, I think it was in 1947. It wasn't the final investigation, not on a final decision. I am pretty sure it was. I went down there to see what the score was, [mor] or less and the guys down there didn't seem to go for it as hot as the times I was there before. p. 68 — "What was the thing that finally convinced you that your machine was worth-

less?" A. "Well, in '48, I tried to get the full compensation for it, and they wouldn't allow it, and I handed it to you Mogren and you made out that 1949 income tax and attached that thing to it, and therefore I think it was 1949 that we made the settlement, it was settled that we wouldn't do anything with that machine." You sent in that return yourself as a settlement. That 1949 return with the $6,300.00 attached to it and it was allowed and then it was supposed to be disallowed and then he told you that they owed us that for 1946 income tax because they didn't allow anything for the repossession on the farm in Wilkin County where I lost $3,500.00. p. 59 — In 1949 when I brought a copy of that abstract up there to your office and showed you (Mogren) that it was worthless or useless for anybody to attempt to do anything when they have all the stuff sewed up the way they do. I learned that they had it sewed up in 1949; mostly through the abstract. p. 70 — Abstracts from the railroads on all inter-line business and they print stations and commodity weight, etc. They use a code to print whereas in my card originally, agents would only cut the figures and send them to general office and they would run them right through the tabulation to get an accounting. Later, the company started doing more than that. I couldn't do business with an agent because they don't use abstracts anyway; they have machines that multiply at the same time too. p. 71 — The information that I would have, they couldn't put down like they do here and if my card was punched at the station of origin, they couldn't use the cards here at all, even for writing checks. I found that out in 1949 when I went up to see Mr. Mogren. I found out they were using [fol. 147h] oblong holes for quite a long time but they never got this code system. p. 72 — That was so long ago. It was after 1947, I think, or 1948. I think somewhere in there; I couldn't swear to the date. A long time ago some Government office in Washington told me that it would be a restraint of trade if they didn't use my cards but the way they've got the cards, you couldn't use them now. If it was just a matter of holes, it might be a restraint of trade if they wouldn't let you run the cards. Rand has a round hole instead of an oblong. The card Rand now has is the same as IBM with a line drawn through the middle and they use the top for information and the bottom for infor-

mation so they get as many units on their card using a round hole as on the oblong hole card. You couldn't infringe on the cards now. It would be impossible. p. 73 — I learned that not later than 1949 when I put in my patent loss for $6,300.00. That was when I made up my mind that I was all done with it. Prior to 1949 and 1950 the Internal Revenue Bureau made out my returns. Mr. Gallagher made one in 1946. He is chief clerk at the income tax office. p. 74 — I don't know if he made others but I have gone down there to have all my returns made up. I wouldn't say for sure but I think so. I went down there for information anyway. I don't know just when it was I talked to Mr. Gallagher about allowing the loss, $6,340.00, but I think it was in 1948 and 1949. p. 75 — I think it was three years I had an agreement with you but I wouldnt' say for sure. You've got a copy of the 1946 return. I don't know too much about my dates. I have talked to the Revenue Bureau. p. 76 — I had all of my papers down there and the man looked them over and he told me he would copy what he wanted and he looked at it and he thought it was all right and I think it was later I got a letter from another man and he said I owed them a lot of money for 1948 and 1949. I told them I didn't owe any money and he said "Under the repossession, you can't get around that". He said "It won't work out that way" so I told him about the loss on the patent and he said he had no authority. That is what he told me. After that, I ain't swearing about these dates, but it was after that when I got Mr. Mogren to make the income tax return because I couldn't get any place. There was a big discussion about the 1946 income tax when Mr. Gallagher wanted me to sign but I didn't sign it. p. 77 — I never got a refund until 1949 on the [fol. 147i] strength of that [latter] from Mr. Mogren attached. Then they called me up and told me I owed them a lot of money. p. 79 — I have receipts for most of the payments but the file that Mr. Winter had, I couldn't get from Mr. Tracey. I think he's got them. I tried for six months to get them. I have a letter showing I paid Siebert $400.00 though and I haven't got receipts from anything. The original amounts were made from memory. I didn't think I had any receipts but I looked around and found a whole lot of receipts. p. 80 — Some of the amounts I paid by

check but that's a long time ago and I never kept them. I did have a checking account once but it was long ago. I have got one now but it is only about two or three months old. The one I had there was a long time ago. The figures I arrived at were from memory. I am laying down receipts I have, not in order. p. 81 — Three documents marked "Received from F. E. Meyer January 20, 22 and March 12, 1921" cover the first [patent], A. M. Carlsen, total about $195.00, Exhibit 7 — p. 82 — On the statement $40.00 paid to A. M. Carlsen, must be receipt. This statement was prepared for the trial from memory. p. 83 — Marsten had amounts to $964.00 according to receipts. For Abbott, I put down $950.00. I think the letter shows $900.00. I had a First National check for those amounts and I didn't keep any other receipts. Carlsen estimated the patent would be $200.00 but not less. I paid him more than that. p. 84 — I haven't got receipts for everything. I paid him more than I put receipts for. I can't remember figures quite that well. I figured if they would allow us $6,000.00, I spent more than that. I am positive of that. I swear on that. Outside of what I've got here, I made no attempt. p. 85 — I think I paid $40.00 and $20.00 in addition to the $195.00. The document dated May 1, 1923, is a receipt from Carlsen for work done on the machine and $50.00 I had to pay to get delivery on the machine, I remember that. p. 86 — After I paid him for working on the machine, I didn't put down for the amount I paid for that card punch machine. That amount doesn't even cover what I paid for it. Carlsen was the patent attorney and he also did work on the machine. The receipt covers the work he did on the patent. He claimed he was an engineer. He made the model. I had work done by Mr. Marthaller. p. 87 — I put an estimate down there but I can't give you receipts. I think it was $400.00 or $500.00 on that. I did estimate $600.00 at first because that included a law suit that we [fol. 147j] sued Marthaller for $20,000.00 but didn't go very far because I had nothing to show that the machine, we valued quite a lot, but couldn't show any value. It went to the Supreme Court. p. 88 — I have two letters from Mr. Seivert. I paid him $400.00. They were written in 1931. They show I paid $400.00 at the rate of $10.00 per month.

p. 89 — You've got receipts there from Arlington Machine Company but for Kraft, it doesn't show anything and I didn't claim anything. I wrote a letter but he never answered. I paid all the amounts on the statements. One April 6, 1931, the next April 30, 1931, and one November 4, 1931. p. 90 — The next item is something by D. E. Larson, patent attorney. There was a second patent. These were in 1937. p. 91 — The five document receipts from D. E. Carlson, this is a copy and the other are originals. These three receipts total $240.00 paid to D. E. Carlson on the second patent. Exhibit 12 — Document marked "Agreement, F. E. Meyer, John Olson" and some receipts are all right and there were two [promisory notes] on the contract. I paid both the [promisory] notes. I didn't figure on paying them but he took it up with a lawyer and I had to pay. p. 92 — These receipts I paid and also the [promisory] notes. The amount is on there. The receipts are in addition [tothe] amount on the contract which was $410.00 and I paid $275.00 in addition. The receipts are all signed by Olson. p. 93 — There might be one that Mrs. Olson signed. Contract, Exhibit 13. p. 94 — I have a letter from Mr. Fairbanks who did some work. His signature is on the bottom of the contract. It is a regular letter dated November 16, 1931. Agreement — Fairbanks and Meyer. That's the original and I paid $450.00 on several items. Exhibit 14 — Agreement to get him some stock. p. 95 — I paid Mr. Marsten $915.00 plus. That was on the contract for $964.-00. This $64.00 I paid to Mr. Leonard. Marston said he would finish the machine but I couldn't make him do anything. p. 96 — Exhibit 15 were paid in 1942. I paid Mr. Kraft but don't know how much and I am not going to put it down. I must have paid him $150.00 but I am not claiming it. Mr. Stevens, the patent attorney in Washington, got a good patent. p. 97 — I don't know how much I paid him and I put down an amount adding up what I had letters for. I don't claim any more than I've got down there. The three items total $395.00. p. 99 — There are then letters. One letter from Stevens should be added in there to [fol. 147k] the Myron Stevens letters. p. 100 — I got receipts for the blue print service, $51.46 or what ever it is.

There is one from Washington and I've tried to get a Canadian patent. I paid a whole lot more. One piece of paper that I have covers the payment that I paid. It only shows $10.00 for the blueprints but I paid quite a bit more. p. 101 — I and Mr. Kraft worked at the Bank Machine Works and I paid Bank $40.00 to use his tools. p. 102 — I paid $10.00 for patent investigation to Watson E. Coleman. He wanted $750.00 for investigation. I paid Cummings $5.00. p. 103 — I paid the amounts shown in the three letters from Shelzel. Exhibit 19. I paid $950.00 to Gerald Abbott on contract dated November 16, 1935. p. 104 — paid by First National Bank cashier receipts but I don't have them. p. 105 — In the original letter we filed with the income tax people, I put down $600.00 to Mathaller. That involved a whole lot of attorney fees, Charlie Winters, and I can't get the file. I paid him $450.00 and more but I don't have the receipt. He had the file. He died and Tracey has them. I've been trying to get them. p. 106 — I didn't take credit for traveling trips to New York, Chicago, Cincinnati and Detroit. p. 107 — I spent money on the trips. You could allow between $300.00 and $500.00 on all the trips, probably more than that, but at least $300.00. p. 108 — We only want the minimum. For all the money I lost, I am getting 20% back. Minimum would be between $300.00 and $500.00. $500.00 would probably cover it. I wouldn't swear on it. p. 109 — Cross examination by Mr. Van Roekel. — I live at 611 West Central Park, am not married. Secured a patent in 1921 or 1922. p. 110 — There was a combination card punching and typewriter machine. Kraft partly designed the machine on which I got the second patent. He made no payments. I paid him a lot of money on that toggle motion and I think he figured he owed me some money and that second patent was mostly gratis but Kraft got his name on there and I had to get his name off before the patent belonged to me so that is what I did. The second patent was an electrically operated device and it was so close no patent attorney could get a patent on it. You would have to get a pretty good attorney to get a patent. p. 111 — I sold my farm in 1943. When I made the trips to Chicago and New York, my transportation was mostly paid for but not always. I rode buses for short

distances and taxi cab: I rode taxi cab quite a bit between stations and different places. I couldn't carry that. I [fol. 1471] might have been on my vacation on those trips but I didn't add for my time. p. 112 — My signature appears on page 5 of the affidavit. p. 113 — I was on a vacation part of the time on those trips but I haven't added anything for time. I didn't go to New York on a vacation. On a trip to Chicago, I might have done some other work but I never vacationed in Chicago. Might have taken a day or two to sightsee and look at tall buildings. p. 114 — I didn't go to Chicago or New York to spend vacations. That's all work. The IBM used the oblong holes before 1947. That would be a restraint of trade but when they came along with that additional stuff, you couldn't get in on that though and I didn't find out until 194... That was the final year. My trip to Chicago was in 1947. p. 115 — When I was there, I saw some of those fellows; I saw L. C. Smith. I didn't determine then that I couldn't use my machine. In the affidavit it says that I conversed with several. p. 116 — Affidavit says I was in Chicago and talked to various people and finally affiant found out what the trouble was and your affiant visited many manufacturers with the idea of inducing them to go into the manufacture of the machine and each one after investigation turned your affiant down. Finally your affiant discovered the true cause, that your [affiant't] invention called for punching a hole in the card and business machines based on the use of punch cards through various machines and the punches being so placed that tabulation could be made from there. Originally the cards had a round hole and your affiant applied for patent on a round hole. Affiant did not realize this constituted any problem but now found that some time ago IBM changed the hole from round to oblong because that increased the punch space about 50% and they could tabulate more information. The present machine used oblong holes and your affiant's machine was unable to provide these holes. The companies who were furnishing tabulating machines would permit the use of machines only with their own cards punched on their machines so even if the cards were punched properly, the user could not use the cards for IBM tabulation. Affiant would

then have to set up and manufacture tabulating machines. They are all patented. Affiant would have to obtain manufacturer's patent from IBM or other company and the cost would be prohibitive. That affiant continued investigation and found another thing true. p. 118 — That other companies rented out their machines and charged high rent [fol. 147m] and IBM recognizing the fact that someone would come out with a machine that could be attached to a typewriter. Thus, they could overcome the necessity of operating high price punch machines and to overcome competition, they did two things. First, they rented tabulators to be used only with their own cards and, second, they perfected their punch machines so that in addition to punching, they did other things such as calculations and tabulations and so they could type out letters and other information in addition to punching, giving the operator a typewriter, punch machine and calculator which was an improvement over affiant's idea and your affiant's attachment therefore could not be used. Affiant came to the conclusion that the machine was of no value. This conclusion was reached after the trip to Chicago in 1947 and an investigation which affiant made in St. Paul. That in 1948 affiant advised income tax man preparing his return that his machine was worthless but he refused to make any allowance. Your affiant then went to an attorney and asked him for assistance to prepare his return. I went to get $915.00 off in 1848 and one of the men down there said, "We wouldn't allow. We haven't got any authority for that." It took quite a while to determine things and it was pretty nearly 1944, I think, before I came to the conclusion we had to abandon that machine. I did not find out in 1947 that I could not manufacture the machine. p. 120 — The trip to Chicago was about January 1, 1948. I didn't make up the entire affidavit. I went up to Mr. Mogren and he had this typed out in his office. p. 121 — He made up a lot of the facts. He read them to me but I don't think I waited to get the last page or the last part of it and I signed it because I figured it was all right. That is the truth. I signed it in Mr. Mogren's office but I don't think it was until 1948 though. Mr. Mogren made up the affidavit. p. 122 — I didn't know that there was printing and all that stuff in

1947. I am sure of that. I might have found it out but I studied it where I worked mostly during 1948. I looked over them abstracts and found what they were doing. I think I claimed a loss on my 1943 return on payment to Marston. I am not sure. I don't know much about patents and there was some rumor that you had to take your loss in the year that you paid it and then later I discovered, I think it was Mr. Gallagher who said you would have to abandon any patents. p. 123. Then the question of abandoning came up and I didn't know what he meant by abandon- [fol. 147a] ing. It meant the actual expiration of the patent. In 1943 I only claimed a loss of $915.00 I paid to Marston. I figured you had to apply for the loss for amounts you paid in that year because it shows that unless you have a patent, that is what you have to do. But if you have a patent, then you have to abandon the patent before you can claim a loss. p. 124 — I always figured I was going to make some money. Gallagher told me that himself. He said "You would be foolish to deduct those amounts now. You might go to work and make some money on that. Then you can't deduct all the amounts"—that is what Gallagher told me. Some of the clerks down there were pretty mad at me. They thought I was trying to slip something over. I think then I told the men down there in 1948 that the machine was stored in some old warehouse and that the next time I moved, I did leave it there. p. 125 — I think that was in 1948. Exhibit A offered and received. The copy of the prospectus is that of the corporation, offered as Exhibit B. I wrote the letter to the Income Tax Commissioner August 13, 1945, which refers to the claim I paid Marston, offered as Exhibit C. p. 127 — I would have to have more time to think whether it was attached to an income tax return. Exhibit D is a letter written by Mr. Mogren indicating that the Universal Card and Accounting Machine Corporation was incorporated in Delaware in 1935 and became inoperative and void in January, 1939. p. 128 — This letter with the letter from the state of Delaware combined as Exhibit D. Exhibit E is a copy of 1948 Federal income tax return and my signature appeared. I made an amended one in 1948 and 1949. p. 129 — Mr. Gallagher says I owe them money for 1948 and 1949 and I showed that they owed me money. I signed the return,

Exhibit E. I think Mr. Mogren has a copy of the amended return because Mr. Gallagher made me put in an amendment. He said I didn't show all my money. I showed him he owed me more money. I got no refund in 1948. The refund in 1949 they claimed was not valid. p. 130 — Exhibit F is a photostatic copy of my 1949 income tax return but is not the amended return by Mr. Mogren. End of cross-examination. Mr. Mogren stated he had nothing further. The Court asked attorneys if the case was submitted and asked the attorneys to work out proposed findings and to make such arguments as they wanted.

[fol. 148] (Findings of Fact and Opinion of The Tax Court of the United States)

T. C. Memo. 1955-271

The Tax Court of The United States

F. E. Meyer, Petitioner,
Docket No. 34221: vs.
Commissioner of Internal Revenue, Respondent.

Filed September 30, 1955.

Edward C. Mogren, Esq., for the petitioner.

George E. Van Roekel, Esq., for the respondent.

Memorandum Findings of Fact and Opinion

Turner, Judge: The respondent determined deficiencies in income tax against the petitioner for the years 1948 and 1949 in the respective amounts of $34 and $443. The deficiency for 1948 and a part of the deficiency for 1949 result from the determination by the respondent that petitioner failed to report interest payments of $180 received in each of those years. While error was alleged as to the respondent's determination that petitioner failed to report interest received, no evidence was offered and no argument has been made thereon. We accordingly regard the [fol. 149] issue as abandoned. The only other issue is whether the petitioner sustained a loss in 1949 of $6,340

claimed to have been expended over an extended period of years in an effort to perfect a patented card punching device.

Findings of Fact.

Petitioner is a resident of St. Paul, Minnesota. He filed his income tax returns for the calendar years 1948 and 1949 with the collector of internal revenue for the district of Minnesota.

Petitioner has been employed by the Northern Pacific Railroad as a clerk in the Revised Rates Division and associated departments in freight accounting since 1920. His job has been concerned primarily with the auditing and tabulation of freight receipts. In 1920 the railroad was using machines for tabulating purposes with respect to these freight receipts which it rented from International Business Machine Corporation, herein referred to as IBM, for approximately $100 a month. The tabulating machines recorded information by means of small holes which were punched on the cards. Petitioner conceived the idea of inventing a card punching device which could be attached to any ordinary typewriter so that the typewriter could be used to tabulate information by means of punching cards in addition to typing other information on the cards. Petitioner purchased an old hand punching machine from a former IBM employee, and had a machinist alter and adapt it to a typewriter for him. Petitioner applied for, and on December 19, 1922, was issued a patent on this machine.

The machine on which petitioner acquired the patent in 1922 had certain functional defects which prevented the successful manufacture of the machine until they were overcome. For this reason, during the years from 1922 to [illegible] about 1941, petitioner took the machine to various machinist and machine shops in an attempt to have the defects corrected. The principal difficulty with the machine as originally designed was that it required an extremely hard stroke on the typewriter key in order to make the device punch a hole in the card. This was eventually overcome by one of the machinists who worked on

the machine, by installing a "toggle motion" on the device which made it easier to punch a hole in the card. After the change, however, the punching device would stick in the card and the key would not return to its normal position. This difficulty was overcome by another machinist who installed springs under the keys, but this change brought back the original trouble, inasmuch as the pressure of the spring had to be overcome in striking the keys and it again required an extremely hard stroke of the typewriter key in order to make the device punch the card. Sometime prior to 1941, presumably in 1939 or 1940, a man named Kraft altered the working model of the machine so that it operated electrically. This eliminated much of the difficulty which had previously been experienced, but the machine was still not perfected and required further work. Petitioner and Kraft applied for, and on January 14, 1941, were issued a patent on the electrical machine. Kraft subsequently assigned his interest in the patent to petitioner. In 1942, petitioner had some additional work done on the machine to put it in "good operating form," but this was not accomplished and the machine was never perfected.

Petitioner tried unsuccessfully to acquire backing to perfect the machine, or to sell it and the patent outright. In 1934 or 1935, petitioner contacted an attorney in Detroit, [fol. 151] Michigan, who suggested that the way to secure backing for the machine was to form a corporation and sell stock. Acting on this suggestion, petitioner had the attorney from a Delaware corporation, known as the Universal Card Accounting Machine Corporation, and subsequently had a broker in New York prepare and file a prospectus for the anticipated issue of stock with the Securities and Exchange Commission. The corporation never sold any stock or performed any corporate functions; it was abandoned by petitioner, and on July 1, 1938, became inoperative and void for nonpayment of taxes under Delaware law. After petitioner abandoned the corporation, he made further trips to New York, Detroit, Chicago and other places for the purpose of interesting people in the machine, but he never found a backer or buyer. In 1947, petitioner

made a trip to Chicago and discussed his machine with various people. From these discussions, petitioner was made aware that his machine, even if perfected, was and for several years had been antiquated and outmoded.

On his income tax return for 1949, petitioner claimed a loss deduction of $6,340 for expenditures made "in perfecting the [second] patent and attempting to establish a manufacturing agency to manufacture and sell the product," as follows:

[fol. 152]

1926	Labor on machine	$ 650
1928	Machine work on machine	400
1930	Labor on machine	600
	Attorney fees—patent	1,000
1932	Machine work on machine	400
1937	Labor on machine	800
1938	Incorporation of Universal Card Punching Machine Corporation	325
	Prospectus and Report	950
1941	Attorney fees—patent	300
1942	Labor on perfecting and building machine	915
		$6,340

Opinion.

Petitioner claimed a deduction of $6,340 for the year 1949 as a result of his alleged abandonment of a card punching machine which he, with the assistance of others, had invented and the two patents which had been issued thereon. It is his contention that it was not until 1947 or 1948 that he acquired information which convinced him that his invention was obsolete and worthless and that on the basis of such information he abandoned the invention and patents in 1949, and that such abandonment was the controlling factor in determining his loss.

Section 23 (e) of the Internal Revenue Code of 1939 provides for the deduction from gross income of losses by individuals "sustained during the taxable year and not com-

pensated for by insurance or otherwise," if incurred in trade or business, or if incurred in any transaction entered into for profit, though not connected with the trade or business. It is well settled that the criterion for the deductibility of a loss is not the taxpayer's ascertainment of such loss, but when the loss is in fact sustained. Lemuel S. [fol. 153] McLeod, 19 B. T. A. 134; S. G. Armstrong, 24 B. T. A. 321; and American Multigraph Co., et al., 10 B. T. A. 406.

The machine which petitioner conceived and with the help of other parties designed and built in the early 1920s was created for needs existing at that time and was meant to compete with other machines designed for a similar purpose and in existence at that time. Petitioner's machine, although patented, could not be operated, due to functional defects which were not overcome until almost twenty years later, when the machine was altered so as to operate electrically. While the electrification of the machine in 1941 overcame some of the functional defects of the earlier machine, it was still not perfected to the point where it could be manufactured and sold, and, more important, had no greater utility than the original machine which, as we have pointed out, was designed to answer the needs of tabulating information in the early 1920s. Such facts, together with the repeated unsuccessful attempts on the part of the petitioner to secure either backing to finance the production of a workable machine or the outright sale of the machine itself and the patents thereon, for some twenty years, are compelling evidence that the machine was worthless years prior to 1949, or even 1947. Information which petitioner claims to have acquired in 1947, indicating to him that his machine was obsolete, appears from the evidence of record to have been available to him many years prior thereto. Moreover, it appears that the petitioner might well have been aware of the worthlessness of the machine much earlier than he now claims, for prior to 1942, petitioner actively sought to perfect, promote and produce the machine, but subsequent to that year, there is no evidence of [fol. 154] any activity with respect to the machine except for the trip in 1947, when petitioner claims to have had discussions with "various people" in Chicago from which he became apprized of the worthlessness of his machine. It is our conclusion, on the record as a whole, that petitioner's

invention was obsolete and worthless prior to 1949, and that any loss sustained as a result of such worthlessness is accordingly not deductible in that year.

Decision will be entered for the respondent.

Seal
The Tax Court of
the United States

[fol. 155] (Order of Redetermination, October 3, 1955)

The Tax Court of The United States
Washington

F. E. Meyer, Petitioner,
Docket No. 34221. vs.
Commissioner of Internal Revenue, Respondent.

Decision.

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed September 30, 1955, it is

Ordered And Decided: That there are deficiencies in income tax for the years 1948 and 1949 in the respective amounts of $34 and $443.

Enter:

Entered Oct. 3, 1955.
Served Oct. 4, 1955.

BOLON B. TURNER,
Judge.

[fol. 156] (Petition of F. E. Meyer for Review of Decision of The Tax Court of the United States)

(Received and Filed December 30, 1955, The Tax Court of the United States)

The Tax Court of The United States

F. E. Meyer, Petitioner,
Docket No. 34221. vs.
Commissioner of Internal Revenue, Respondent.

Now comes the petitioner, F. E. Meyer, and petitions for a review of the decision of the Tax Court in the above

entitled matter entered October 3, 1955, wherein and whereby the Court found that there are deficiencies in income tax for the years 1948 and 1949 in the respective amounts of $34.00 and $443.00.

The Decision is based upon Findings of Fact that a claim for loss by the petitioner in 1949 covering the expense incurred by the petitioner in obtaining patent, perfecting patent and attempting to manufacture the article in question, could not be allowed because the machine for which patent was obtained was worthless long before 1949, and that petitioner knew, or should have known, that it was worthless prior to that date. It is the position of the petitioner that first the machine was a valuable patent even up to 1949, but that in 1949 petitioner discovered that it could not be manufactured for any practical purpose, and that in that year he determined to, and did, abandon the said patent and that he is entitled to his loss as of that year, and second that he has proved a loss over a period of years in connection with the said patent in the sum of Six Thousand Three Hundred ($6,300.00) Dollars.

F. E. MEYER,
Petitioner.

E. C. MOGREN,
Attorney for Petitioner.

[fol. 157] (Notice of Filing of Petition for Review and Acknowledgment of Service)

(Filed December 30, 1955, The Tax Court of the United States)

To: John Potts Barnes
Chief Counsel,
Internal Revenue Service

You are hereby notified that F. E. Meyer did, on the 30th day of December, 1955, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Eighth Circuit, of the decision of this Court heretofore

rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 30th day of December, 1955.

HOWARD P. LOCKE,
Clerk,
The Tax Court of the United States.

Service of copy of Petition for Review acknowledged this 30th day of December, 1955.

JOHN POTTS BARNES,
Chief Counsel.
Internal Revenue, Service
Attorney for Respondent.

[fol. 158] (Order for Transmission of Original Exhibits to Appellate Court).

Upon consideration of the form of the exhibits called for as part of the record on review in the above-entitled proceeding, it is

Ordered: That petitioner's exhibits 1 to 20, inclusive, and respondent's exhibits A to F, inclusive, be transmitted to the United States Court of Appeals for the Eighth Circuit in their original form.

BOLON B. TURNER,
Judge.

Dated: Washington, D. C., September 14, 1956.

[fol. 159] (Designation of Petitioner of Contents of Record)

(Received and Filed September 14, 1956, The Tax Court of the United States)

Now comes the petitioner above named and hereby designates the following to be included in the Record:

1. The Petition for Redetermination

2. The narrative Record

3. The Findings of the Tax Court

4. The Petition for Review by the Circuit Court of Appeals

E. C. MOGREN,
Attorney for Petitioner.

516 New York Building,
Saint Paul 1, Minnesota

Service of a copy of the above designation acknowledged this 14th day of September, 1956.

JOHN POTTS BARNES,
Chief Counsel,
Internal Revenue Service,
Attorney for Respondent.

[fol. 160] (Supplemental Designation of Petitioner of Contents of Record)

(Received and Filed September 14, 1956, The Tax Court of the United States)

September 12, 1956.

The Tax Court of the United States
Washington, D. C.

Att: Howard P. Locke
Clerk of Court

Re: F. E. Meyer
Docket No. 34221
USCA Eighth Circuit

Dear Sir:

As requested, we herewith return to you the original narrative statement which we previously sent to you, to

gether with two copies thereof. As we understand it, you will transmit this to the Clerk of the Appellate Court.

We have received a letter from Mr. Koch at St. Louis, and from this letter apparently he does not have all the records necessary for the appeal. Of course, we do not know just what you have sent to the Clerk. Do you not send down the entire file when an appeal is taken? If not, then there should be sent the original Determination of the respondent, the Petition for Re-determination, the Findings of the Tax Court, the Petition for Review by the Circuit Court of Appeals and the Narrative Record.

As we understand it, all of the exhibits would be sent down with the appeal and that should take care of the situation.

Respectfully yours,

MOGREN & O'DONNELL,

E. C. MOGREN.

ECM/jm
Encl.

cc: E. E. Koch, Clerk
United States Court of Appeals
St. Louis 1, Missouri

Service of a copy of this supplemental designation acknowledged this 14th day of September, 1956.

JOHN POTTS BARNES,
Chief Counsel
Internal Revenue Service
Attorney for respondent.

[fol. 16] (Designation of Respondent of Additional Portions of Record)

(Filed September 17, 1956, The Tax Court of the United States)

To the Clerk of The Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Eighth

Circuit a copy, duly certified as correct, of the following document in addition to those specified by the petitioner on review in his designation of contents of record filed with the Tax Court served upon this office on September 14, 1956:

The complete transcript of the hearing before the Tax Court on July 14, 1953.

CHARLES K. RICE,
Assistant Attorney General.

JOHN POTTS BARNES,
Chief Counsel,
Internal Revenue Service,
Counsel for Respondent on Review.

Statement of Service:

A copy of this Designation of Additional Portions of Record on Review was mailed to petitioner's counsel, E. C. Mogren, Esq., 516 New York Bldg., St. Paul 1, Minn., on September 17, 1956.

VERNON F. WEEKLEY,
Special Attorney,
Internal Revenue Service.

[fol. 162] (Clerk's Certificate to Transcript)

The Tax Court of The United States
Washington

F. E. Meyer, Petitioner,
Docket No. 34221. vs.
Commissioner of Internal Revenue, Respondent.

I, Howard P. Locke, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 161, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my

office as called for by the Praecipe in the appeal as above numbered and entitled.

Seal
The Tax Court of
the United States

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 17th day of September, 1956.

HOWARD P. LOCKE,
Clerk.
The Tax Court of the United States.

Filed Sep. 24, 1956, E. E. Koch, Clerk.

[fol. 163] (Order of United States Court of Appeals for the Eighth Circuit confirming late docketing of case and as to time in which to file Transcript of Record, etc.)

United States Court of Appeals for the Eighth Circuit.

September Term, 1955.

F. E. Meyer, Petitioner,
No. 15,650. vs.
Commissioner of Internal Revenue.

Petition to Review Decision of The Tax Court of the United States.

There is presented to this Court a motion of petitioner requesting a reasonable time within which the record on the petition for review may be completed. It appears there has been some misunderstanding concerning preparation of record and docketing, and the time for docketing under the Rules having expired, It is Ordered by this Court that the petition for review be docketed on the preliminary record received from the Clerk of the Tax Court of the United States consisting of abbreviated list of docket entries, decision of the Tax Court and petition for review with

proof of service, and the late filing and docketing of the case in this Court is hereby confirmed.

It is further Ordered by this Court that typewritten transcript of record of pleadings, and proceedings in the Tax Court be filed in this Court within twenty days from this date, and the time for filing printed record and brief of petitioner is hereby extended to forty days from the date of filing such transcript of record.

September 6, 1956.

SUPREME COURT
LIBRARY
COURT, U.S.

Office - Supreme Court, U.S.
FILED
AUG 20 1957
JOHN T. FEY, Clerk

No. 388

IN THE

Supreme Court of the United States

Petition for writ to appeal case 15650 in U. S. Supreme Court

F. E. Meyer vs. Internal Revenue Commissioner

FRANK E. MEYERS
374 Wabasha St.
St. Paul 2, Minn.

IN THE

Supreme Court of the United States

Petition for writ to appeal case 15650 in U. S. Supreme Court

---

F. E. Meyer vs. Internal Revenue Commissioner

There is no dispute in this case about the law. The findings were endorsed by the appeal judges who in addition said no authority was shown by petitioner, see their last paragraph. All the government laws quoted are agreed to namely, that the year must be 1949 to be the correct year of abandonment to comply with those laws; therefor the authority of law is shown. It was agreed to by all judges that the patent machine in question was obsolete long before 1949, but that is false. 1949 is the year abandonment was made and at positively no other time. The machine is not obsolete, that is the issue in this case.

Refer to government brief page 8, middle of paragraph 2 R. 29, 30. Note beginning 14 lines from bottom of page: Machines had been developed which were far superior to my mere card punch device and could accomplish far more than his device e.g., machines which could punch cards, typewrite, calculate and tabulate. R. 17, 19, 24, 25, 29, 30. Taxpayer discovered at this time his device could not punch oblong holes required of modern card punch machines and he would have to manufacture his own tabulator machines. R. 24, 25. Indeed taxpayer testified that he concluded in 1944 that he had to abandon the machine and he stated in 1948 the machine

was stored in a warehouse and the next time he moved he would leave it there. R. 24, 26.

There is no machine today that can punch cards, typewrite, calculate and tabulate. Every one of these cards are hand punched today the same as 30 years ago and as for typewriting, calculating and tabulating, what a joke. A special machine does the calculating and separate cards are punched for that purpose. The typewriting is done not by tabulating, but by what they call univac machines. The IBM & Remington Rand is no longer in the tabulating business as their machines are not tabulators as you will find by referring to Thomases directory.

There are a number of tabulating machine companies today and have been for a long time, namely, Monarch Metal Products Co. Inc., 724 S. Columbus Ave., Mt. Vernon, N. Y.; E-Z Sort System Ltd., 45 2nd Ave., San Francisco; Denomination Co. Inc., 263 Broadway, N. Y.; Multi-Counter Mfg. Co., 401 Broadway, N. Y.; Baeckler Instrument Co., 37 E. Rillits, Tucson. Does that look like I would have to manufacture my own tabulator. Then he goes on to say taxpayer discovered at this time his device could not punch oblong holes required by modern punch machines. That is false. Remington Rand used a round hole and still does, page 19,—4 lines from bottom of transcript, but what difference does it make if round, square, oblong, or hexagon holes are used? See page 18 of transcript, line 19, it is the code not the hole or shape of the hole. Page 19, line 19 and line 29 to 32, in transcript, I said they use a code and the operator punching cards has to know the code. That has nothing to do with my machine or the present tabulating machine companies, they have been here for years. At the trial Judge Turner said I did not have to educate him and no doubt for that reason many of these details were omitted.

Indeed, the government says, taxpayer testified in 1944 he had to abandon the machine. This is 1949 not 1944, see page 119 of original transcript line 18 or page 5, line 3 of Mogrens brief. Another false argument by the government.

The reason I abandoned in 1949 was because I could not go through all those big transactions again, I was too old, had no financial means, patent was too old and the time was gone. Now about leaving the machine in an old warehouse, I left the machine at 520 Cedar Street May 1st, 1951 when I moved to 611 W. Central Park which was the next move as stated in transcript, they tore the building down for the State Capitol Approach.

Refer to page 25, 3rd line from bottom, I said, affidavit was made and signed in 1948. This is an error it was 1951. Note here, page 25, line 11, from bottom, I said I did not find out in 1947 that I could not manufacture the machine. The trip to Chicago was Dec. 24th to Jan. 5th, 1948. When the affidavit was made in 1951 Mogren wanted to know if I went to Chicago in 1949. I said no the last time I was in Chicago was in 1947. He wanted it to appear I learned to abandon the machine on the trip to Chicago. Remember this trip he wanted to be in 1949 and no abandonment was ever mentioned prior to that time. So I agreed he could say it was after 1947 that I went to Chicago, line 21, page 25 of transcript.

Actually it was 1949 that abandonment was made. I learned nothing about abandonment in Chicago, I saw the manager of the L. C. Smith Typewriter Co., but he said they could not finance it, page 24, lines 17 to 20 of transcript. The transcript only says I saw L. C. Smith Co. and what I added here is what it actually was. It certainly can be expected that there would be errors in dates in a trial 4 years after and the affidavit two years after occurrences. On top of page

9, line 3, government brief, they claim there are many inconsistencies, but their own inconsistencies outnumber mine many times over.

Now let us see how this transaction really was. There was no dispute about any income taxes until the year 1948 and 1949 returns. The 1948 return was in the year 1949 and the 1949 return was in the year 1950. Therefor the argument really started in the year 1949 and the year 1948 referred to in transcript actually was in the year 1949 on the 1948 return, see the first 10 lines of page 19 of transcript. On the 1948 return I told the government the patent was abandoned for the first time that was in the year 1949 and quite a while after the 1948 return had been filed. It was too late for any refund and they paid no attention to me and that is when I went to Mogrens office with the $6,340.00 record of loss and he kept it until the 1949 return was made in the year 1950 and it was in the year 1950 on the 1949 tax return that this $6,340.00 record was attached. See first 10 lines of page 19 of transcript.

In last page 10 of government brief in fine print 8 lines from bottom of page, they claim $1,275.00 not to be deductable spent on the purpose of financing. The receipts in the government file will show $6,340.00 and probably as high as $7,000 to $8,500 was spent even though the $1275 is not included. $6,340.00 without any traveling expenses and many other bills were omitted because it was an estimate, but after months of search the receipts were found one by one. $6,340.00 will be considered sufficient.

It is clearly shown that neither Mogren or the government knows anything about the tabulating or univac business and the trial should take precedence over the affidavit and the explanation in this petition bears out conclusively the facts as they absolutely are. The judge complained about the con-

fusion at end of trial, but did not the government pursue the confusion and Mogren helped, could anyone do better in trying to remember dates to answers thrown at you at the pace they were going and do better? I believe this court will find 1949 is the year abandonment was made and rightfully so as clearly shown in the evidence.

Part 2

I asked Mogren why he did not say a word about the refund in 1949 in connection with the loss of $3500.00 in 1946. He said because I did not have the return filed or made out by a lawyer. I said why should I have it made out by a lawyer, I was not trying to beat the government. He said they'll beat you. In the year 1950 right after the refund, late in the year they wanted to know why at the same time of requesting the refund back, why I didn't report the $180.00 interest on $3000.00 sale of farm in 1946. I didn't report the $180.00 in 1948 or 1949, that is in the years 1949 and 1950 because I did not get a refund in 1946 and that is why after I got the refund I reported the $180.00 and have been doing so for ten years so now they owe me either the refund, or tax I paid on the $180.00. Refund of tax on the $180.00 interest paid for ten years will amount to about the same as the refund in 1950; so that if they had let the refund stand and taken the tax on the $180.00 everything would now be excellent. That is where the government confusion comes in, is it not? They pursue it.

See line 19, beginning about line 10 to 12 and page 20, line 19 from bottom including about 11 lines of transcript. Van Runkel, the government attorney, was going into this, but the judge didn't want to hear it so I thought it was very strange he passed on it in his findings. The refund was not

outlawed in 1949 and the law on repossession is very clear. $6500 fair market value in 1944 sold in 1946 for $3000; loss $3500. 1954 internal revenue code, sections see Vol. 2, page 25001, et seq. For full text of proposed and final regulations issued under 1954 code, see V. R. 2 regulations finding list, page 23100-1-et esq.

They didn't dispute I had a loss in 1946.

I believe this court will also find this to be correct.

FRANK E. MEYERS
374 Wabasha St.
St. Paul 2, Minn.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 388

F. E. MEYER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court (R. 27–32) are not officially reported. The opinion of the Court of Appeals (R. 40–44) is reported at 243 F. 2d 262.

JURISDICTION

The judgment of the Court of Appeals, affirming the Tax Court's decision, was entered on April 25, 1957 (R. 45). The petition for a writ of certiorari was filed on August 20, 1957, the time for filing the petition having been extended to August 23, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTION PRESENTED

Whether the court below correctly affirmed the Tax Court's decision that petitioner did not sustain a deductible loss in 1949 because his patented card punching device became worthless prior to 1949 and petitioner was apprised of such worthlessness.

STATUTE AND REGULATIONS INVOLVED

Internal Revenue Code of 1939:

> SEC. 23. DEDUCTIONS FROM GROSS INCOME.
>
> In computing net income there shall be allowed as deductions:
>
> * * * * * * *
>
> (e) *Losses by Individuals.*—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—
>
> (1) if incurred in trade or business; or
>
> (2) if incurred in any transaction entered into for profit, though not connected with the trade or business; * * *
>
> * * * * * * *
>
> (26 U. S. C. 1952 ed., Sec. 23.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

> SEC. 29.23 (e)–1. *Losses by Individuals.*—Losses sustained by individual citizens or residents of the United States and not compensated for by insurance or otherwise are fully deductible if (a) incurred in the taxpayer's trade or business, or (b) incurred in any transaction entered into for profit, * * *

> In general, losses for which an amount may be deducted from gross income must be evidenced by closed and completed transactions, fixed by identifiable events, bona fide and actually sustained during the taxable period for which allowed. Substance and not mere form will govern in determining deductible losses. * * *
>
> * * * * * *

STATEMENT

The facts found by the Tax Court are as follows:

Petitioner has been employed by the Northern Pacific Railroad since 1920 as a clerk in the Revised Rates Division and associated departments in freight accounting. His job has been concerned primarily with the auditing and tabulation of freight receipts. For tabulating purposes with respect to these freight receipts, the railroad in 1920 was using machines which it rented from International Business Machines Corporation. The tabulating machines recorded information by punching small holes in cards. Petitioner conceived the idea of inventing a card punching device which could be attached to any ordinary typewriter so that the typewriter could be used to tabulate information by punching cards in addition to typing other information on the cards. Petitioner had a machinist alter an old hand-punching machine and adapt it to a typewriter. Petitioner was issued a patent on this machine on December 19, 1922. (R. 28.)

Functional defects, however, prevented successful manufacture of the patented machine. During the years from 1922 to about 1941, petitioner attempted

to have these defects corrected. The principal difficulty with the machine, as originally designed, was that it required an extremely hard stroke on the typewriter key in order to make the device punch a hole in the card. This was eventually overcome by installing a "toggle motion" on the device which made it easier to punch a hole in the card. After the change, however, the punching device would stick in the card and the key would not return to its normal position. This difficulty was overcome by installing springs under the keys. This change, however, brought back the original trouble. Some time prior to 1941, a man named Kraft altered the working model of the machine so that it operated electrically. Much of the difficulty previously experienced was eliminated, but the machine was still not perfected. Petitioner and Kraft were issued a patent on the electrical machine on January 14, 1941. Kraft subsequently assigned his interest in the patent to petitioner. In 1942, petitioner had some additional work done on the machine to put it in "good operating form", but this was not accomplished and the machine was never perfected. (R. 28–29.)

Petitioner tried unsuccessfully to acquire backing to perfect the machine or to sell it and the patent outright. In 1934 or 1935, petitioner had an attorney form a Delaware corporation. The corporation never sold any stock or performed any corporate function. It was abandoned by petitioner, and on July 1, 1938, became inoperative and void for nonpayment of taxes under Delaware law. After petitioner abandoned the corporation, he made further trips to New York,

Detroit, Chicago, and other places for the purpose of interesting people in the machine, but he never found a backer or buyer. In 1947, petitioner made a trip to Chicago and discussed his machine with various people. From these discussions, petitioner was made aware that his machine, even if perfected, was and for several years had been antiquated and outmoded. (R. 29–30.) His machine was created for needs existing in the 1920's. (R. 31.)

On his income tax return for 1949, petitioner claimed a loss deduction of $6,340 for expenditures made "in perfecting the [second] patent and attempting to establish a manufacturing agency to manufacture and sell the product". (R. 30.) These expenditures were made during the years 1926 through 1942 and included the sum of $1,275 expended to incorporate and sell stock. (R. 30.)

The Commissioner determined a deficiency in income taxes for the year 1949 on the ground that in that year petitioner did not sustain a loss of $6,340.[1]

---

[1] The deficiency for 1948 and a part of the deficiency for 1949 result from the determination by the Commissioner that taxpayer failed to report interest payments of $180 received in each of those years. (R. 27). Error was alleged as to the Commissioner's determination that taxpayer failed to report interest received, but no evidence was offered in the Tax Court and no argument was made on this issue either in the Tax Court or in the Court of Appeals. The Tax Court sustained the Commissioner's determination on the ground that this issue was abandoned. (R. 27.) The Court of Appeals agreed. (R. 41.)

The Tax Court sustained the Commissioner's determination, holding that petitioner did not sustain the loss claimed during the year 1949 because his invention was obsolete and worthless prior thereto and he was apprised of such worthlessness. (R. 31–32.) The Court of Appeals affirmed. (R. 45.)

ARGUMENT

Section 23 (e), Internal Revenue Code of 1939, *supra*, p. 2, provides that losses of an individual which are incurred in any transaction entered into for profit are deductible. The deduction must be taken in the year in which the loss is sustained as evidenced by closed and completed transactions, fixed by identifiable events. *Shoolman* v. *Commissioner*, 108 F. 2d 987 (C. A. 1st), certiorari denied, 310 U. S. 637; Treasury Regulations 111, Section 29.23 (e)–1, *supra*, pp. 2–3. The test for determining the year in which a loss is deductible under Section 23 (e) is a practical and flexible one, depending upon the circumstances of each case. *Boehm* v. *Commissioner*, 326 U. S. 287, 293.

In no event could the sum of $1,275, which purportedly was spent to incorporate, constitute a deductible loss in 1949. This sum was organizational and stock selling expenses and was deductible no later than 1939 after the corporation became inoperative and void and petitioner abandoned it. *Simmons Co.* v. *Commissioner*, 33 F. 2d 75 (C. A. 1st) certiorari denied, 280 U. S. 588; *Barbour Coal Co.* v. *Commissioner*, 74 F. 2d 163 (C. A. 10th), certiorari denied, 295 U. S. 731.

No question of loss for 1946 (Pet. 5–6) is an issue in this case.

The question here involved, i. e., whether petitioner's invention became worthless in 1949, is thus one of fact (*Rand* v. *Helvering* 116 F. 2d 929 (C. A. 8th), certiorari denied, 313 U. S. 594). The Tax Court found that the claimed loss was not sustained in 1949 since petitioner's invention became worthless prior to that year and he was apprised of such worthlessness. (R. 30, 31–32.) The Court of Appeals agreed that the Tax Court's findings were supported by the record and that "it is obvious from the undisputed facts that the patented machine had become commercially worthless long before 1949". (R. 42, 44.) Clearly, there is no basis for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

LEE A. JACKSON,
CHARLES B. E. FREEMAN,
Attorneys.

SEPTEMBER 1957.

U. S. GOVERNMENT PRINTING OFFICE 1957